Rev. No. 2

**********ENFORCEMENT CONFIDENTIAL**********
**********ATTORNEY-CLIENT PRIVILEGED**********

TECHNICAL REFERRAL DOCUMENT

I. Foamex Inc. - Eddystone Plant

1500 East 2nd Street
Eddystone, PA 19022

EPA ID#PAD002274975
Large Quantity Generator

II. Background

A. Description of Facility

The Foamex Eddystone facility (facility or Foamex) is located in Eddystone, PA (Delaware County just north of Chester PA) at 1500 E. 2nd Street. It consists of several buildings distributed on 52 contiguous acres. The facility is bounded on the south by the Delaware River, on the east by the Industrial Park Development Company, and on the west by the Penn Terminal Warehouse.

B. Description of Alleged Violator

Foamex International, headquartered at 1000 Columbia Ave, Linwood (Marcus Hook), PA, includes 67 plants in the United States and Mexico that employ 6,414 people. Of these 67 plants, 24 are major foam-pouring plants which makes Foamex the largest North American manufacturer of polyurethane and advanced polymer foam. The Foamex Eddystone facility has about 170 employees. Foamex Eddystone is a manufacturer of polyurethane foam and is covered under SIC codes 3086 and 2821. The facility has two foam-pouring operations referred to by facility personnel as CTM/LFM and MaxFoam, where "CTM" stands for "continuous traversing machine" and "LFM" stands for "log foam machine." The facility generates solid and hazardous wastes from its operations. The wastes are a result of foam-making operations, maintenance activities, and operation of a wastewater pretreatment facility that discharges treated wastewater to the local Publicly Owned Treatment Works (POTW), which is owned by the Delaware County Regional Water Quality Authority (DELCORA). Hazardous wastes generated by the facility's foam-making and other support processes include:

- spent methylene chloride wastes [EPA waste code F002] from trough cleaning;
- spent solvents containing N-ethylmaleimide (NEM) and/or dimethylformamide [EPA waste code D001] from foam-machine-head flushing;
- spent solids and liquids containing the listed waste toluene diisocyanate (TDI) [EPA waste code U223];
- spent solvents containing di-(2-ethythexyl) phthalate [EPA waste code U028];
- spent liquids containing characteristic ignitable wastes from maintenance operations [EPA waste code D001]; and
- spent sodium hydroxide, 8% aqueous.

The facility is classified as a large quantity generator (LQG) but in the recent past also operated a PADEP Permit by Rule incinerator.

C. Compliance History

The following inspections are documented in the file:

6/23/98 - EPA CEI - this inspection forms the basis for this referral document (see Attachment I). Specific findings and alleged violations associated with this CEI are described in detail in Section III of this referral below.

5/30/96 - State CEI - no violations

9/23/94 - EPA Multi Media Inspection - ten areas of concern were identified under RCRA. No EPA action was taken after consultation with PADEP about the need for a permit.

2/2/95 - State CEI - no violations

3/31/94 - State CEI - Foamex was cited for not labeling drums of methylene chloride awaiting reclamation as hazardous waste and for burning methylene chloride still bottoms and Di-Methylformamide in a municipal waste incinerator without a permit. An NOV was issued by PADEP on May 4, 1994.

8/4/93 - State CEI - Foamex was cited for storing methylene chloride still bottoms outside the drum storage area. An NOV was issued by PADEP on August 10, 1993.

3/17/93 - State CEI - Foamex was cited for not inspecting the drum storage are when drums are not in storage and several Permit by Rule violations. An NOV was issued on April 2, 1993.

10/9/91 - State CEI - no violations

12/14/90 - State CEI - no violations

4/8/90 - State CEI - no violations

2/24/89 - State CEI - no violations

9/25/87 - Foamex was cited for container management violations and Permit by Rule violations for their incinerator.

8/28/87 - Foamex was cite for container management violations.

1/28/87 - Foamex was cited for a tank labeling violation and failure to update closure cost annually. An NOV was issued February 5, 1987.

7/17/85 - Inspection report not in file. An NOV was issued for failure to properly document training, failure to properly confine tank, and failure to have written inspection log.

11/1/83 - Inspection report not in file.

There is no documented enforcement action beyond the NOVs mentioned above.

(b) (5) [redacted]

D. Financial Status

See attached Dunn and Bradstreet Reports (Attachment II)

III. Description of Alleged Violations

A. Summary of Inspection

This referral is based on the findings of a June 23,1998, RCRA inspection conducted by George Houghton of EPA's Environmental Services Division (ESD), Paul Jardel, a Solid Waste Specialist with PADEP, and Mark LaGatta of TechLaw Inc., an EPA contractor. The Inspection Report (Attachment I) documents several violations of both Federal and State Law. Foamex supplied information to Mr. Houghton after the inspections to document the measures taken to correct the violation noted during the inspection. This information was transmitted by letter dated September 9, 1998 (Attachment III). EPA issued a request for information letter under Section 3007(a) of RCRA to Foamex on December 21, 1998 and received the facility's response dated January 28, 1999 (Attachment IV).

B. Descriptions of Violations

1. a. Violation:

Failure to follow the waste determination procedures as prescribed by 40 CFR §265.1084(a) (Subpart CC volatile organic compound concentration). Owners/operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments or containers subject to either subparts, I, J or K of 40 CFR Part 265 were required to determine whether any hazardous waste stream managed in each of the above waste management units contained a volatile organic compound (VOC) concentration equal to or greater than 500 parts per million by weight (ppmw). This waste determination was required to have been completed prior to the effective date of the subpart CC regulations, December 6, 1996. Foamex utilizes containers and at least one tank (vinyl coating tank) for hazardous waste management at its facility. As a result of not making the required VOC waste determinations, Foamex has failed to comply with all of the subsequent requirements of Subpart CC.

b. Evidence:

During the inspection of June 23, 1998, the inspectors inquired about Subpart CC compliance. It was their opinion that the facility representatives knew nothing about the regulatory requirements. After discussion of the 500 ppmw threshold for control measures, the facility representatives told the inspectors they believed the waste in the vinyl coating tank was below the regulatory level based on the MSDS sheets for material in the tank; however, no documentation was available

that this determination was ever made as required by §265.1084(a)(4)(i) (owner/operator knowledge determination). The inspector questioned that opinion since the waste is hazardous because of ignitability (D001). At the request of the inspector, the facility tested the vinyl coating tank waste for VOCs in August 1998 by taking four samples as required by Subpart CC; however the transmittal indicates the samples were taken from the tank and not the point of origination as required by §265.1084(a)(1). Furthermore, Foamex is not believed to have collected the samples in accordance with a written site sampling plan as required by 40 CFR §265.1084((a)(3)(ii)(C). The results of the tank testing, transmitted to George Houghton (Attachment III) on September 9, 1998, indicate an average VOC level for the four samples, each of which was collected on August 14, 1998, was 3547 ppmw, approximately seven times the regulatory limit.

There was no indication that waste determinations were performed on any of the containerized wastes; however, the subpart CC requirement for <120-gallon containers is that they be sealed with no visible gaps, cracks or holes on or along the container lid. It is permissible for an owner/operator to utilize subpart CC controls on a hazardous waste management unit without making a formal waste determination. The inspectors noted seven drums in an outdoor storage area. All seven containers appeared closed, labeled properly and in good shape.

(b) (5) [redacted]

[redacted]

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

Potential For Harm - Major
Prior to the June 23, 1998 CEI, Foamex was unaware of the subpart CC regulations, which are aimed at minimizing the amount of volatile organic emissions to the atmosphere from tanks, containers and surface impoundments. The subject CC regulations were promulgated to protect human health and the environment from volatile organic emissions from facilities like Foamex that manage hazardous wastes in tanks and containers. By ignoring the subpart CC regulations, Foamex was responsible for a significant potential for harm to human health and the environment as well as harm to the RCRA program, which results in the selection of the major category of the penalty matrix. Additionally, the top of the box will be used for the penalty to reflect the seriousness of the violation.

Extent of Deviation - Major
By not making a waste determination on it hazardous waste streams, Foamex was unaware whether any of its hazardous waste units were subject to the subpart CC regulations. There are several cascading violations that stem from the failure to make a waste determination that through enforcement discretion, will not be pursued.

Foamex clearly should have known about the existence of the subpart CC regulations. Subpart CC regulations were first proposed in the Federal Register on July 22, 1991. The subpart CC rule was promulgated in the Federal Register on December 6, 1994. Technical amendments and the effective date of the subpart CC rule were announced in the Federal Register on November 25, 1996. In the spring of 1997, EPA Region 3, created an outreach document which summarized

the organic air emission standards, which include subpart CC. This document was mailed to all treatment, storage, and disposal (TREATMENT, STORAGE, AND DISPOSAL (TSD)) facilities and large quantity generators in the region, including Foamex. EPA sponsored well-advertised one-day seminars on subpart CC to the general public in Newark, DE, Wilkes-Barre, PA and four other locations in the region in the fall of 1997. Foamex's non-compliance with all of the subpart CC regulations merits the classification of the extent of deviation from the requirements as major.

No multi day penalty calculation is included for this violation.

No significant economic benefit was realized by not making the required waste determination. The facility did collect four samples and had them analyzed for VOCs in August 1998. The delayed cost of the analysis was significantly less than $2,500.

There is no adjustment warranted for good faith efforts to comply.

There is no adjustment to the penalty for inflation as the violation occurred on the subpart CC effective date of December 6, 1996.

(b) (5) [redacted]

(b) (5) [redacted]

2. a. Violation

Failure to install and begin operation of all control equipment or waste management units required to comply with 40 CFR Part 265, subpart CC by December 6, 1996 (effective date of subpart CC regulations) as required in 40 CFR §265.1082(a)(1). As Foamex did not maintain a subpart CC implementation schedule in their facility records on or before December 6, 1996, installation of the applicable control equipment could not be delayed per 40 CFR §265.1082(a)(2) beyond the subpart CC effective date. Foamex also failed to follow the waste determination procedures as prescribed by 40 CFR §265.1084(c) (subpart CC-maximum organic vapor pressure determination). The maximum organic vapor pressure determination is required to evaluate whether Tank Level 1 controls are sufficient for subpart CC compliance. In the absence of the maximum organic vapor pressure determination, an owner/operator is required to install and operate Tank Level 2 controls.

b. Evidence

During the June 23, 1998 CEI, the inspectors noted that the lid on the vinyl coatings tank was partially open to the atmosphere (See Plate A-4 in Attachment 1). The vinyl coatings tank did not meet the requirements of any of the five options available for subpart CC Tank Level 2 Controls (i.e., internal floating roof, external floating roof, fixed roof vented to control device, pressure tank, or tank located within an enclosure vented to a control device). The tank observed on June 23, 1998 was a fixed roof tank that was not vented to a control device, nor was it located within an enclosure vented to a control device. The fixed roof tank was observed by the inspectors to allow venting of the tank's contents to the atmosphere through an open lid.

(b) (5) [redacted]

(b) (5) [redacted]

Potential For Harm - Major

The release of VOCs to the atmosphere is detrimental to human health and the environment. Volatile organic compounds contribute to the ozone (smog) problem that currently plagues Region III, particularly in the summer months. VOCs can also be carcinogenic and contribute to other health and environmental problems. Prior to the June 23, 1998 CEI, Foamex was unaware of the subpart CC regulations, which are aimed at minimizing the amount of volatile organic emissions to the atmosphere from tanks, containers and surface impoundments. Foamex did not have any subpart CC emission controls installed on its vinyl coatings hazardous waste storage tank prior to the date of the above inspection.

The potential for harm to human health and the environment results in the selection of the major category of the penalty matrix. Additionally, the middle of the box value will be used for the penalty to reflect the relative seriousness of the violation.

Extent of Deviation - Major
Not only did Foamex fail to meet the Tank Level 2 requirements, the company did not even meet the less stringent Tank Level 1 Control requirements, as it exhibited poor management practices by operating the vinyl coatings tank with its cover ajar. This not only resulted in the direct release of VOCs to the atmosphere, but also increased the potential for the contents of the tank to overflow the tank walls and spill into the secondary containment, which as described in a later count in this technical referral, was in a state of disrepair at the time of the CEI. It should also be noted that Foamex is in violation of the general operating requirements under both the federal and current state regulations as they apply to spill prevention; however, the delegated regulations are not as stringent as the current regulations. It is for these reasons that the major category for extent of deviation from the requirements was selected.

Multi day penalty calculation:
The tank required subpart CC controls on every day that hazardous waste was stored in the unit. Since the facility does not characterize the contents of the tank until it is shipped out, it is only possible to document that the tank contained hazardous waste on the date the waste was manifested off-site for disposal. Upon review of the manifests and waste characterization data provided by Foamex in response to the RCRA §3007(a) request, subpart CC controls were required on the vinyl coatings tank on the following dates at a minimum: 12/11/96, 2/11/97, 3/17/97, 5/2/97, 6/12/97, 8/15/97, 1/30/98, 4/2/98. Therefore, 7 days of violation in addition to the initial date of the violation (12/11/96) will be assessed the multi day component of the penalty. (b) (5) [redacted]

No significant economic benefit was realized by not installing the required control equipment. The facility did install a carbon adsorption unit on the vinyl coating tank in October 1998, but the cost of delaying the installation of that unit was

Note:
(b) (5) [redacted]

estimated to be significantly less than $2,500.

There is no adjustment warranted for good faith efforts to comply.

The gravity-based portion of the multi day component of the penalty amount was adjusted 10% upward to reflect EPA's inflation-based adjustment to the RCRA Civil Penalty Policy, pursuant to the "Civil Monetary Penalty Inflation Adjustment Rule," 61 Federal Register 69360 (hereafter "Penalty Adjustment Rule"), which became effective on and applies to violations occurring after January 31, 1997. (b) (5) [redacted].

There is no inflation adjustment to the penalty for the first day of the violation as the violation occurred on the subpart CC effective date of December 6, 1996.

(b) (5) [redacted]

(b) (5) [redacted]

3. a. Violation

Failure to maintain adequate training records per 25 PA Code §75.265(f)(6)(iv) (40 CFR §265.16(d)(4)). 25 PA Code §75.262(g)(1)(v) (40 CFR §262.34(a)(4)) allows a generator to accumulate hazardous waste on-site without a permit for 90 days or less provided that, among other regulations, the generator complies with the requirements of §75.265(f) (relating to personnel training). 25 PA Code §75.265(f)(6)(iv) requires a facility to maintain records that document that the required training or job experience has been given to, and completed by, facility personnel.

b. Evidence

During the June 23, 1998 CEI, the inspectors noted that no data for 1996 regarding training completed by facility personnel was in the facility record. In Foamex's response to EPA's RCRA §3007(a) information request letter, the facility stated that "1996 annual RCRA training records could not be located during the time frame of this written response."

(b) (5) [redacted]

(b) (5) [redacted]

Potential For Harm - Minor
A facility must be able to document that its employees are properly trained. Improper or incomplete hazardous waste operations training could lead to the improper management of hazardous waste which ultimately could result in significant harm to human health and the environment. While paperwork that documents Foamex's training provided to employees was not in the facility records, Foamex has claimed that its employees did receive the required training. The minor gravity category was selected because the facility was able to document that its employees were adequately trained in 1995 and 1997, and Foamex also claims that the actual training was given to its employees in 1996

Extent of Deviation - Moderate
The regulations require that records be kept that document that the training or job experience required given to and completed by facility personnel. Since Foamex did not have any records for any of its employees for calendar year 1996, the minor category was not chosen. Since records for all other years requested existed in the facility's operating record, the a major extent of deviation from the requirements was not justified. For the reasons cited above, a moderate extent of deviation was selected.

There is no multi day penalty calculation associated with this violation. Foamex received no economic benefit as a result of this violation. No adjustment to the gravity portion of the penalty is warranted for the facility's good faith efforts to comply.

The gravity-based portion of the penalty amount was adjusted 10% upward to reflect EPA's inflation-based adjustment to the RCRA Civil Penalty Policy, pursuant to the "Civil Monetary Penalty Inflation Adjustment Rule," 61 Federal Register 69360 (hereafter "Penalty Adjustment Rule"), which became effective on and applies to violations occurring after January 31, 1997.

(b) (5) [redacted]

(b) (5) [redacted]

4. a. Violation

Failure to provide adequate secondary containment per 25 PA Code §75.265(r)(6) (40 CFR §265.193(b)(1). 25 PA Code §75.262(g)(1)(ii) (40 CFR §262.34(a)(1)(ii)) allows a generator to accumulate hazardous waste on-site without a permit for 90 days or less provided that, among other regulations, the

generator complies with the requirements of §75.265(r) (relating to tanks). 25 PA Code §75.265(r)(6) requires a facility to provide a containment structure with a capacity that equals or exceeds the largest above ground tank volume plus a reasonable allowance for precipitation. Also, 25 PA Code §75.265(h)(1) requires facilities to be maintained and operated to minimize the possibility of a discharge of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water which could threaten human health or the environment.

b. Evidence

During the June 23, 1998 CEI, two cracks and a small hole were noted in the concrete secondary containment area which surrounds the vinyl coating tank (Plate A-5, Attachment 1). In its September 9, 1998 correspondence to the EPA inspector, Foamex provided photographs of the secondary containment area repairs that had been made - joints and cracks were sealed with concrete sealer.

(b) (5) [redacted]

(b) (5) [redacted]

Potential For Harm - Moderate

Although spillage associated with a catastrophic tank failure would most likely have migrated from the secondary containment area via the cracks and hole identified above, the probability of such an event occurring was relatively low. According to a Foamex representative, the vinyl coatings tank is visually inventoried each time waste is transferred to the unit, but there is no documentation to confirm this. The tank and secondary containment area do not appear to be inspected by the facility as often or as thoroughly as the regulations require (See Violation No. 5 below). The moderate gravity category for potential for harm was selected because of the above reasons.

Extent of Deviation - Minor

The facility did install a secondary containment structure capable of containing the entire contents of the vinyl coatings tank. However, Foamex has failed to maintain this area over time. The regulations clearly state that facilities are required to be maintained and operated to minimize the possibility of a discharge of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water which could threaten human health or the environment. By allowing the secondary containment area to deteriorate, it is clear that the facility was not doing

everything in its power to minimize that possibility. The containment area appeared able to contain a spill from the tank due to overfilling, which is the most likely type of spill that could occur. For these reasons, a minor extent of deviation from the requirements was selected.

There is no multi day penalty calculation associated with this violation. Foamex received no significant economic benefit as a result of this violation.

Inflation Adjustment-
The gravity-based portion of the penalty amount was adjusted 10% upward ($100) to reflect EPA's inflation-based adjustment to the RCRA Civil Penalty Policy, pursuant to the "Civil Monetary Penalty Inflation Adjustment Rule," 61 Federal Register 69360 (hereafter "Penalty Adjustment Rule"), which became effective on and applies to violations occurring after January 31, 1997.

No adjustment is warranted for good faith efforts to comply.

(b) (5)

(b) (5)

5. a. Violation

Failure to inspect a hazardous waste storage tank as required by 25 PA Code §75.265(r)(8) (40 CFR §265.195(a)). 25 PA Code §75.262(g)(1)(ii) (40 CFR §262.34(a)(1)(ii)) allows a generator to accumulate hazardous waste on-site without a permit for 90 days or less provided that, among other regulations, the generator complies with the requirements of §75.265(r) (relating to tanks). 25 PA Code §75.265(r)(8) requires a facility to inspect certain equipment and waste levels in tanks at least once each operating day.

b. Evidence

In EPA's December 21, 1998 RCRA §3007(a) information request letter, the facility was asked to submit copies of inspection records to document the frequency and areas inspected of hazardous waste tanks. In Foamex's response, hazardous waste tank inspection forms from 6/30/98 through January 25, 1999 were provided. These forms indicate that inspections are conducted on approximately a weekly basis with as many as ten days elapsing between inspection dates (i.e., 10/19/98 - 10/29/98). Foamex's tank inspection form does not include, in checklist form, the parameters required to be inspected daily per the delegated regulations.

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

Potential For Harm - Minor
Foamex conducts formal inspections of its hazardous waste storage tank and surrounding secondary containment area on approximately a weekly basis. However, facility personnel visually inventory the tank every time waste is added or removed from it, according to a facility representative. Any spill or leak that is observed during either of the above inspection types would be immediately addressed by facility personnel. The potential for harm for not conducting formal inspections every day is relatively low and therefore, the minor gravity category for potential for harm was selected.

Extent of Deviation - Moderate
The regulations clearly state that certain equipment and hazardous waste levels must be inspected every day. In addition, the federal and current state requirement outline additional areas that must be addressed daily. The facility has historically gone for periods of longer than one week between formal tank inspections, according to the inspection records provided by Foamex. For these reasons, a moderate extent of deviation from the requirements was selected.

Multi day penalty calculation
Since the gravity based penalty falls within the Minor/Moderate matrix box, enforcement discretion may be used in assessing the multi day component of the penalty. The inspections records provided by the facility begin on 6/30/98 and end on 1/25/99. Therefore, 7/1/98 will serve as the first day of the violation (no

inspections exist for that date) and one day from each month from July 1998 through January 1999 will be used to calculate the multi day penalty. A total of 7 days of violation in addition to the initial date of the violation (7/1/98) will be assessed the multi day component of the penalty. (b) (5) [redacted]

One day per month rather than each day of non-compliance in the time period from July 1998 through January 1999 was chosen because Foamex did record inspection results on roughly a weekly basis, coupled with the assertion by a Foamex representative that the tank is visually inventoried every time waste is transferred into it. During this visual inventory process, it is likely that the inspector would notice any leaking tank components and initiate the necessary repair process. Furthermore, the inspection records provided by Foamex indicate that there had been no releases or leaks from the vinyl coatings tank during the above time period.

Inflation Adjustment-
The gravity-based portion of the penalty amount was adjusted 10% upward ($240) to reflect EPA's inflation-based adjustment to the RCRA Civil Penalty Policy, pursuant to the "Civil Monetary Penalty Inflation Adjustment Rule," 61 Federal Register 69360 (hereafter "Penalty Adjustment Rule"), which became effective on and applies to violations occurring after January 31, 1997.

No adjustment is warranted for this violation for good faith efforts to comply-

(b) (5) [redacted]

6. a. Violation

Failure to submit an exception report to PADEP as required by 25 PA Code §75.262(j)(2) (40 CFR §262.42(a)(2)). 25 PA Code §75.262(h)(1) (40 CFR §262.40(a)) requires a facility to retain a copy of each manifest signed in accordance with §75.262(e) until it receives a signed copy from the designated facility which received the waste. If a signed copy from the designated facility is not received within 45 days of the date the waste was accepted by the initial transporter or within 14 days of the date the waste was expected to arrive at the hazardous waste facility, whichever is less, an exception report must be filed with PADEP.

b. Evidence

During the June 23, 1998 inspection, a manifest (PAE 9022230) dated 3/12/98 by

the facility was reviewed. Copy 5 of the manifest, which is normally signed by the receiving waste-disposal facility, was missing from the facility's operating records. The date of the inspection was more than 100 days past the date of shipment. In its January 28, 1999 response to EPA's RCRA §3007(a) information request letter, Foamex stated that it had "no records of exception reports on file." Foamex was able to obtain a signed copy (signed on 3/16/98) of the manifest from the designated facility, Waste Technologies, Inc. and provided this information to EPA shortly after the June 23, 1998 CEI.

(b) (5) [redacted]

(b) (5) [redacted]

Potential For Harm - Minor
It is important to both PADEP's and EPA's RCRA program to be able to document that all hazardous wastes generated by all large quantity generators is disposed of within the RCRA regulatory universe. The key to tracking movements of hazardous waste between facilities is the manifest system. Missing signatures on manifests indicate that the hazardous waste may not be managed properly. In this case, however, Foamex was able to obtain a signed copy of the manifest in question from the TSDF, which allays the fear that the actual waste was mismanaged. The potential for harm due to this paperwork deficiency is relatively low and therefore, the minor gravity category for potential for harm was selected.

Extent of Deviation - Moderate
The regulations clearly state that exception reports need to be filed with PADEP

within certain deadlines. Not only did Foamex miss the deadline, it failed entirely to submit the report at all. Had it not been for the June 23, 1998 CEI, the facility would still not realize that it had a recordkeeping or potentially a much more serious problem. For these reasons, a moderate extent of deviation from the requirements was selected.

There is no multi day penalty calculation associated with this violation. Foamex received no significant economic benefit as a result of this violation.

Inflation Adjustment-
The gravity-based portion of the penalty amount was adjusted 10% upward ($100) to reflect EPA's inflation-based adjustment to the RCRA Civil Penalty Policy, pursuant to the "Civil Monetary Penalty Inflation Adjustment Rule," 61 Federal Register 69360 (hereafter "Penalty Adjustment Rule"), which became effective on and applies to violations occurring after January 31, 1997.

Good faith efforts to comply-
No adjustment is warranted for this violation.

(b) (5) [redacted]

(b) (5) [redacted]

7. a. Violation

Failure to perform adequate hazardous waste determinations as required by 25 PA Code §75.262(b)(1)(iii) (40 CFR §262.11(c). 25 PA Code §75.262(b)(1) (40 CFR §262.11) requires a facility that generates a solid waste to determine if that waste is a hazardous waste utilizing a prescribed procedure. If the waste is neither excluded from regulation nor a listed hazardous waste, 25 PA Code §75.262(b)(1)(iii) requires the generator to determine whether the waste is identified in §75.261(g) (relating to criteria, identification and listing of hazardous waste either through analytical testing of the waste or the application of knowledge of the hazard characteristic of the waste).

b. Evidence

In its January 28, 1999 response to EPA's RCRA §3007(a) information request letter, Foamex provided copies of manifests and associated analytical data relied upon to make hazardous waste determinations for waste from the vinyl coating tank. On seven separate instances in 1996 and 1997, waste from the vinyl coating tank was shipped off-site as non-regulated waste, while the associated analytical data showed that the waste exhibited the hazardous waste characteristic of ignitability. On each of the seven occasions, it appears that the Treatment,

Storage, and Disposal Facility (TSDF) that received the waste either prepared a new manifest or adjusted the existing manifest accordingly to take the ignitable waste into account.

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Potential For Harm - Major
It is vital to both PADEP's and EPA's RCRA program that all hazardous waste is handled, stored, transported, treated and disposed of within the established regulations. Shipment of a hazardous waste as a non-regulated material could potentially lead to catastrophic conditions in the event of an accident as the need to alert the proper emergency response team could be delayed or disregarded leading to the potential for serious harm to human health and the environment. The facility's misuse of the hazardous waste manifest also poses significant harm to the overall RCRA program.

Extent of Deviation - Moderate
Foamex, in the majority of instances, did properly manifest its hazardous waste shipments. It appears that in 1998, Foamex began manifesting all of the wastes from the vinyl coating tank as hazardous ignitable waste, presumably as a

protective measure. However, four of the seven occasions where hazardous waste was improperly shipped occurred consecutively. The company should have realized that there was a problem with their waste determination procedures. For these reasons, a moderate extent of deviation from the requirements was selected.

There is no multi day penalty calculation associated with this violation. However, each improper shipment of hazardous waste must be addressed as a separate incident. (b) (5) [redacted]

Foamex received no significant economic benefit as a result of this violation.

Inflation Adjustment-
The gravity-based portion of the penalty amount was adjusted 10% upward ($4,750) for the five instances where hazardous wastes were improperly shipped after January 31, 1997 to reflect EPA's inflation-based adjustment to the RCRA Civil Penalty Policy, pursuant to the "Civil Monetary Penalty Inflation Adjustment Rule," 61 Federal Register 69360 (hereafter "Penalty Adjustment Rule"), which became effective on and applies to violations occurring after January 31, 1997.

Good faith efforts to comply-
No adjustment is warranted for this violation.

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

IV Relief Sought

A. Injunctive Relief Sought

- Comply fully with all applicable subpart CC requirements
  - Conduct waste determinations on each hazardous waste stream
  - Install and operate controls on the vinyl coatings tank as prescribed by the regulations
  - Develop sampling, monitoring and inspection plans
  - Conduct sampling, monitoring and inspections in accordance with the above plans
  - Maintain records as required by 40 CFR §265.1090

- Maintain all training records as required by 25 PA Code §75.265(f)(6)(iv)

- Ensure that secondary containment area surrounding the vinyl coatings tank at all times meets the requirements of 25 PA Code §75.265(r)(6) and 25 PA Code §75.265(h)(1)

- Conduct daily inspections of the vinyl coatings tank and surrounding secondary containment area as required by the current PA regulations

- Maintain copies of hazardous waste manifests in the facility records as required by 25 PA Code §75.262(h)(1)

V. National /Regional Significance of Case

Foamex was an inspection target because of its location within a Community Based Environmental Protection Area. Specifically, the facility is located just north of Chester, PA, which is included in the South/Southwest Philadelphia Initiative. (b) (5) [redacted]

(b) (5) [redacted]

[redacted]